STATE OF CALIFORNIA
DECISION OF THE
PUBLIC EMPLOYMENT RELATIONS BOARD

JUDITH D. KIMBROUGH, Charging Party, v. ALAMEDA COUNTY MEDICAL CENTER, Respondent.	Case No. SF-CE-96-M PERB Decision No. 1620-M April 21, 2004

Appearance: Thomas M. Bond, Jr., for Judith D. Kimbrough.

Before Duncan, Chairman; Whitehead and Neima, Members.

DECISION

WHITEHEAD, Member: This case is before the Public Employment Relations Board (PERB or Board) on appeal by Judith D. Kimbrough (Kimbrough) of a Board agent's dismissal (attached) of her unfair practice charge. The charge alleged that the Alameda County Medical Center (Center) violated the Meyers-Milias-Brown Act (MMBA)[1] by refusing to meet and confer with Kimbrough. Kimbrough alleged that this conduct constituted a violation of MMBA sections 3500 and 3502.

The Board has reviewed the entire record in this matter, including the original and amended unfair practice charge, the warning and dismissal letters and Kimbrough's appeal. The Board finds the warning and dismissal letters to be free of prejudicial error and adopts them as a decision of the Board itself.

The Board shall briefly address the items raised on appeal below.

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[1]MMBA is codified at Government Code section 3500 et seq. Unless otherwise indicated, all statutory references herein are to the Government Code.

DISCUSSION

Kimbrough has alleged that the Center has refused to process her grievance through arbitration and otherwise hear her grievance beyond the third level. Under MMBA, only the bargaining representative has standing to allege a violation of the right to meet and confer or other rights only accorded to the exclusive representative. (MMBA sec. 3505; Oxnard School District (Gorcey and Tripp) (1988) PERB Decision No. 667; State of California (Department of Corrections) (1993) PERB Decision No. 972-S.) Contrary to Kimbrough's assertion, there are no MMBA provisions that require an employer to meet and confer with individual employees. Rather, MMBA section 3503 merely refers to the employee's ability to meet with the employer without the employee organization.

Kimbrough further argues that the Board agent was incorrect in citing cases from Educational Employment Relations Act (EERA)[2] and the Ralph C. Dills Act (Dills Act)[3] to support the principle that only the bargaining representative has standing to assert the right to meet and confer. However, when interpreting the MMBA, it is appropriate to take guidance from cases interpreting the National Labor Relations Act and California labor relations statutes with parallel provisions. (Fire Fighters Union v. City of Vallejo (1974) 12 Cal.3d 608 [116 Cal.Rptr. 507].) MMBA section 3505 closely parallels Dills Act section 3517 and EERA section 3543.3.[4]

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[2]EERA is codified at Government Code section 3540, et seq.

[3]The Dills Act is codified at Government Code section 3512 et seq.

[4]See also, PERB Regulation 32603(c) (PERB regs. are codified at California Code Regs., tit. 8, sec. 31001, et seq.), Dills Act section 3519(c), and EERA section 3543.5(c) pertaining to employer unfair practices for failing to meet and confer in good faith with the exclusive representative.

Finally, Kimbrough raises new allegations on appeal, adding an unfair practice charge against SEIU Local 535 (SEIU), and a letter from SEIU Representative Fred Beal in which SEIU declined to represent Kimbrough after her retention of Thomas M. Bond, Jr. Under PERB Regulation 32635(b), Kimbrough may not raise new allegations or new supporting evidence on appeal without good cause. The information in the new allegations was known to Kimbrough during the time her charge was being processed. In fact, Kimbrough alleged that her amended charge contained these allegations when it did not. Kimbrough has provided no other information to support a finding of good cause to raise these issues on appeal. We therefore find that Kimbrough has not shown good cause to present these new allegations on appeal.

ORDER

The unfair practice charge in Case No. SF-CE-96-M is hereby DISMISSED WITHOUT LEAVE TO AMEND.

Chairman Duncan and Member Neima joined in this Decision.

Dismissal Letter

April 2, 2003

Thomas M. Bond, Jr,
Thomas Moore Bond Group
2123 1/2 5th Street
Berkeley, CA 94710-2208

Re: Judith D. Kimbrough v. Alameda County Medical Center
Unfair Practice Charge No. SF-CE-96-M; First Amended Charge
DISMISSAL LETTER

Dear Mr. Bond:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 11, 2003. Judith D. Kimbrough alleges that the Alameda County Medical Center violated the Meyers-Milias-Brown Act (MMBA)[1] by refusing to meet and confer.

I indicated to you in my attached letter dated March 19, 2003, that the above-referenced charge did not state a prima facie case. You were advised that, if there were any factual inaccuracies or additional facts which would correct the deficiencies explained in that letter, you should amend the charge. You were further advised that, unless you amended the charge to state a prima facie case or withdrew it prior to March 26, 2003, the charge would be dismissed.

On March 26, 2003, I received a first amended charge. The amended charge provided the following facts that were not included in the original charge.

On June 13, 2001, Charging Party was informed that she was being transferred to the Highland Campus effective July 12, 2001. When asked why a less senior employee was not transferred, Charging Party was told she was not a Spanish speaking employee and the Medical Center needed a Spanish speaking Patient Services Technician.

On July 11, 2001, Charging Party filed a grievance alleging a violation of the transfer provision of the parties' MOU. Charging Party also noted in her grievance that a less senior employee, who was not transferred, was also not a Spanish speaker.

[1] The MMBA is codified at Government Code section 3500 et seq. The text of the MMBA and the Board's Regulations may be found on the Internet at www.perb.ca.gov.

On July 20, 2001, the grievance was denied at Level I stating that inverse seniority was not used as the Hospital needed bilingual workers to translate for the patients.

On July 30, 2001, the SEIU Shop Steward requested the grievance be elevated the Level II. On August 1, 2001, Patient Business Services Manager James Parked denied the grievance citing MOU provisions which allow for such an action.

On August 7, 2001, SEIU Field Representative Fred Beal requested the grievance be elevated to Level III. The third level meeting took place on December 14, 2001. On January 9, 2002, the grievance was denied at Level III for the reasons used in the Level II denial.

Shortly after the January 9, 2002, decision, SEIU informed Charging Party that it would not take the grievance to binding arbitration as it was cost prohibitive. On February 9, 2002, Charging Party hired her own private attorney to assist in arbitrating this matter.

On May 13, 2002, Charging Party received a letter from Deputy County Counsel Donna Ziegler denying the grievance

On May 24, 2002, Charging Party and her attorney met with Josh Thurmond, a staff assistant for Board of Supervisors President Scott Haggerty. Mr. Thurmond advised Charging Party to contact County Supervisor Keith Carson, who is in charge of the County's over-sight committee.

On August 26, 2002, Charging Party and her attorney attended an over-sight committee meeting. Charging Party's attorney asked the committee to recommend to the Medical Center that it meet with Charging Party to discuss her grievance. On September 9, 2002, the committee rejected this request stating the Medical Center had followed the proper procedures.

Based on the above stated facts and those provided in the original charge, the charge still fails to state a prima facie violation of the MMBA, for the reasons provided below.

Charging Party contends the Medical Center is refusing to arbitrate her grievance. However, as noted in my March 19, 2003, letter, individual employees do not have standing to allege unilateral change violations, (Oxnard School District (Gorcey/Tripp) (1988) PERB Decision No. 667.) nor allege violations of sections which protect the collective bargaining rights of employee organizations. (State of California (Department of Corrections) (1993) PERB Decision No. 972-S.) Moreover, Government Code section 3505 states in relevant part:

> The governing body of a public agency, or such boards, commissions, administrative officers or other representatives as may be properly designated by law of by such governing body, shall meet and confer in good faith regarding wages, hours and other terms and conditions of employment with representatives of such recognized employee organizations as defined in subdivision (b) of Section 3501. (emphasis added)

In addition to the case law cited above, the statutory provision makes clear that the duty to meet and confer in good faith is a duty owed only the recognized employee organization and not to individual employees. As such, this charge must be dismissed.

Even assuming Charging Party had standing to allege unilateral change violations, the charge still fails to state a prima facie case as the charge fails to state what the prior policy was and how such policy was changed. Without such information, PERB cannot determine whether a violation has occurred.

Right to Appeal

Pursuant to PERB Regulations,[2] you may obtain a review of this dismissal of the charge by filing an appeal to the Board itself within twenty (20) calendar days after service of this dismissal. (Regulation 32635(a).) Any document filed with the Board must contain the case name and number, and the original and five (5) copies of all documents must be provided to the Board.

A document is considered "filed" when actually received before the close of business (5 p.m.) on the last day set for filing or when mailed by certified or Express United States mail, as shown on the postal receipt or postmark, or delivered to a common carrier promising overnight delivery, as shown on the carrier's receipt, not later than the last day set for filing. (Regulations 32135(a) and 32130.)

A document is also considered "filed" when received by facsimile transmission before the close of business on the last day for filing together with a Facsimile Transmission Cover Sheet which meets the requirements of Regulation 32135(d), provided the filing party also places the original, together with the required number of copies and proof of service, in the U.S. mail. (Regulations 32135(b), (c) and (d); see also Regulations 32090 and 32130.)

The Board's address is:

Public Employment Relations Board
Attention: Appeals Assistant
1031 18th Street
Sacramento, CA 95814-4174
FAX: (916) 327-7960

If you file a timely appeal of the refusal to issue a complaint, any other party may file with the Board an original and five copies of a statement in opposition within twenty (20) calendar days following the date of service of the appeal. (Regulation 32635(b).)

[2] PERB's Regulations are codified at California Code of Regulations, title 8, section 31001 et seq.

Service

All documents authorized to be filed herein must also be "served" upon all parties to the proceeding, and a "proof of service" must accompany each copy of a document served upon a party or filed with the Board itself. (See Regulation 32140 for the required contents and a sample form.) The document will be considered properly "served" when personally delivered or deposited in the first-class mail, postage paid and properly addressed. A document filed by facsimile transmission may be concurrently served via facsimile transmission on all parties to the proceeding. (Regulation 32135(c).)

Extension of Time

A request for an extension of time, in which to file a document with the Board itself, must be in writing and filed with the Board at the previously noted address. A request for an extension must be filed at least three (3) calendar days before the expiration of the time required for filing the document. The request must indicate good cause for and, if known, the position of each other party regarding the extension, and shall be accompanied by proof of service of the request upon each party. (Regulation 32132.)

Final Date

If no appeal is filed within the specified time limits, the dismissal will become final when the time limits have expired.

Sincerely,

ROBERT THOMPSON
General Counsel

By _____
Kristin L. Rosi
Regional Attorney

Attachment

cc: Alameda County Medical Center

Warning Letter

March 19, 2003

Thomas M. Bond, Jr,
Thomas Moore Bond Group
2123 1/2 5th Street
Berkeley, CA 94710-2208

Re: Judith D. Kimbrough v. Alameda County Medical Center
Unfair Practice Charge No. SF-CE-96-M
WARNING LETTER

Dear Mr. Bond:

The above-referenced unfair practice charge was filed with the Public Employment Relations Board (PERB or Board) on March 11, 2003. Judith D. Kimbrough alleges that the Alameda County Medical Center violated the Meyers-Milias-Brown Act (MMBA)[1] by refusing to meet and confer.

Investigation of the charge revealed the following. Ms. Kimbrough is a Patient Services Technician II at the Alameda County Medical Center. As such, she is exclusively represented by the Service Employees International Union, Local 535. The charge states in its entirety as follows:

> The employer has refused to meet and confer despite repeated requests.

Based on the above provided statement, the charge fails to state a prima facie violation of the MMBA, for the reasons provided below.

PERB Regulation 32615(a)(5) requires, inter alia, that an unfair practice charge include a "clear and concise statement of the facts and conduct alleged to constitute an unfair practice." Thus, the charging party's burden includes alleging the "who, what, when, where and how" of an unfair practice. (State of California (Department of Food and Agriculture) (1994) PERB Decision No. 1071-S, citing United Teachers-Los Angeles (Ragsdale) (1992) PERB Decision No. 944.) Mere legal conclusions are not sufficient to state a prima facie case. (Ibid.; Charter Oak Unified School District (1991) PERB Decision No. 873.) Herein, Charging Party fails to

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provide any relevant dates or facts surrounding the allegation. As such, it is impossible for me to determine if an violation occurred.

Even assuming Charging Party provides relevant dates and facts, the charge still fails to state a prima facie violation of the duty to meet and confer. Individual employees do not have standing to allege unilateral change violations, (Oxnard School District (Gorcey/Tripp) (1988) PERB Decision No. 667.) nor allege violations of sections which protect the collective bargaining rights of employee organizations. (State of California (Department of Corrections) (1993) PERB Decision No. 972-S.) As such, Charging Party lacks standing to allege the Medical Center refused to meet and confer.

For these reasons the charge, as presently written, does not state a prima facie case. If there are any factual inaccuracies in this letter or additional facts that would correct the deficiencies explained above, please amend the charge. The amended charge should be prepared on a standard PERB unfair practice charge form, clearly labeled First Amended Charge, contain all the facts and allegations you wish to make, and be signed under penalty of perjury by the charging party. The amended charge must have the case number written on the top right hand corner of the charge form. The amended charge must be served on the respondent's representative and the original proof of service must be filed with PERB. If I do not receive an amended charge or withdrawal from you before March 26, 2003, I shall dismiss your charge. If you have any questions, please call me at the above telephone number.

Sincerely,

Kristin L. Rosi
Regional Attorney

KLR